

KEPPEL OPP'N EXH. 46

CONFIDENTIAL - SIMON R. HAYDEN
IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

EIG ENERGY FUND XIV, :
L.P., EIG ENERGY FUND : No. 18-cv-01047-PGG
XIV-A, L.P., EIG ENERGY :
FUND XIV-B, L.P., EIG :
ENERGY FUND XIV :
(CAYMAN), L.P., EIG :
ENERGY FUND XV, L.P., :
EIG ENERGY FUND XV-A, :
6 L.P., EIG ENERGY :
FUND XV-B, L.P., and :
EIG ENERGY FUND :
XV(CAYMAN), L.P., :
Plaintiffs, :
vs. :
KEPPEL OFFSHORE & :
MARINE LTD., :
Defendant. :
----- :

VIDEOTAPE DEPOSITION VIA ZOOM OF:
SIMON R. HAYDEN
THURSDAY, MAY 27, 2021

REPORTED BY:
SILVIA P. WAGE, CCR, CRR, RPR
JOB NO. 4590550

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2 that the due diligence that was conducted was not
3 adequate?

4 MS. PAK: Objection to form.

5 MR. KUMAGAI: What's the objection
6 Claudia?

7 MS. PAK: I don't know what you mean
8 by "adequate."

9 Q. Mr. Hayden, do you know what I mean
10 by "adequate"?

11 A. Well, do you want to clarify? I
12 don't -- I don't really know.

13 Q. Well, have you ever expressed
14 concerns about the level of due diligence that
15 EIG performed on an investment?

16 A. On an investment we made or --
17 because my -- you know, part of my job is to make
18 sure diligence is done properly. So, if I see a
19 problem, you know, on any deal, I will improve
20 the -- so it's, you know, I mean -- you know,
21 weekly, monthly I'm improving diligence for the
22 deals I work on. So it would be a fairly common
23 thing for me to see areas in investments that
24 needed to be diligenced.

25 Q. Can you give some examples of

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2 concerns you have raised about the level of due
3 diligence that had been done on a particular
4 investment analysis?

5 A. I wouldn't say I "raised" concerns.
6 I mean, I'm just speaking to my teams today. We
7 should look at this or, you know, have we thought
8 about this event and do we need to dive into
9 that.

10 So, I mean, you know, recently,
11 we've, you know, just a general mark on the
12 moment, you know, we've asked market consultants
13 -- this is a renewables deal. It's completely
14 separate. But, you know, there are market risks
15 around electricity prices that I had a view on,
16 you know, this is the major risk in this country,
17 we should ask the consultant to look at that. I
18 wasn't really raising a concern. I was just
19 telling the team what they should be doing.

20 Q. And in that example you just gave,
21 you were asking the team to look harder at the
22 risks of fluctuations in electricity prices?

23 A. Yes.

24 MS. PAK: Objection to form.

25 A. Yes. And they would have appointed

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2 -- we are working with a market advisor. So they
3 told the market advisor to look into it, you
4 know.

5 Q. And so we talked earlier about
6 changes in oil prices or the market and the risks
7 those potential changes would pose to an
8 investment.

9 Why was that a risk that you wanted
10 to look at further in this case?

11 MS. PAK: Objection to form.

12 A. The oil price -- are we talking about
13 the oil price risk in relation to the Sete
14 investment?

15 Q. Yes, yes.

16 A. Well, I think, what I was trying to
17 say before was -- well, I don't recall what we
18 did. So that's the first thing.

19 But from my recollection of the
20 transaction and the fact we had long-term fixed
21 price, charter agreements from Petrobas, my
22 recollection is the investment was protected from
23 all price risk and it may not have been an issue
24 we looked at in detail. I just can't recall
25 exactly what we did.

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2 Q. Do you recall whether changes in oil
3 prices actually did have an effect on EIG's
4 investments in Sete?

5 A. I don't recall if they did.

6 Q. Do you recall ever doing --
7 conducting an analysis of the impact that
8 fluctuations in oil prices would have on EIG's
9 investments in Sete?

10 A. I don't recall any analysis to that
11 effect.

12 Q. Do you recall ever discussing the
13 impact that fluctuations in oil prices could have
14 on EIG's investments in Sete with anyone else at
15 EIG?

16 A. No, I don't recall that.

17 Q. So how many people back in 2010,
18 2011, how many people would EIG, typically, staff
19 on the due diligence work for a potential
20 investment?

21 A. The core Deal Team would normally be
22 three or four people and then there would be
23 other people involved from EIG, you know, could
24 be several other people involved.

25 Q. And can you describe the roles of --

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2 the typical roles of the three or four core
3 people on a Deal Team?

4 A. Well, we tend to have, you know, deal
5 leader, the senior person. I should say Kevin
6 Corrigan on this one, you know, at the time of
7 making the investment, and then a vice president
8 would be, you know, looking after the analysis,
9 due diligence and then, you know, a junior person
10 would be in charge of the model.

11 Sometimes, the junior person would
12 also be doing the diligence as well. I mean,
13 that's quite often the case, that they were doing
14 the model and the diligence.

15 Q. And so, after the due diligence
16 process is completed, what is the next step in
17 the investment process at EIG?

18 MS. PAK: Objection to form.

19 A. After due diligence is completed, we
20 would go to -- we made -- there may be sort of
21 legal documentation sort of work stream as well,
22 which is going on. But when diligence is
23 completed or nearly complete and documentation
24 is, you know, well advanced, we would go to
25 Investment Committee to get approval to move

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2 forward with the transaction. There may be
3 remaining diligence left to do. There may be a
4 bunch of other documents. But that would be the
5 next major step in the process.

6 Q. When you say, there may be remaining
7 diligence left to do before going to an
8 Investment Committee, what do you mean by that?

9 MS. PAK: Objection to form.

10 A. Well, I mean, to an extent, the
11 diligence is never over until you've funded the
12 investment, right, and then you move to the
13 monitoring phase. So you could get Investment
14 Committee approval to move forward with the
15 transaction, you know, good period before you
16 fund or even sign the documents. So we're still
17 working on diligence in those -- we may have
18 completed the bulk of it by the time we go to
19 Investment Committee, but we're still working on
20 diligence.

21 But it's not, you know, the
22 completion of diligence is an ongoing thing. We
23 keep doing diligence and then that evolves into
24 monitoring at some point once the investment's
25 funded.

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2 Q. And after the Investment Committee
3 approves an investment, what is the next step,
4 typically, at EIG?

5 A. Well, that's a green light to proceed
6 to, you know, complete any remaining diligence,
7 if there is any, and then to agree documentation.
8 And if there are material changes in that period,
9 you would go back to Investment Committee. But
10 if there are no material changes to what was
11 expected Investment Committee, then that would be
12 sufficient to, you know, to sign the deal.

13 Q. And if there were -- was additional
14 work to be done after gaining Investment
15 Committee approval, how would the Deal Team
16 communicate that to the Investment Committee?

17 MS. PAK: Objection to form.

18 A. That would normally be done verbally.
19 You know, we would have been speaking to each
20 other outside of Investment Committee meetings.
21 And so it would have been understood if there was
22 remaining diligence expected and then, you know,
23 there is a delegation of some responsibility to
24 the Deal Team and the Deal Team leader to
25 highlight any, you know, new findings, any

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2 changes that results in the remaining diligence
3 to the Investment Committee.

4 Q. And during your time at EIG, has EIG
5 ever not funded an investment after receiving
6 approval from the Investment Committee?

7 A. I don't know.

8 Q. Are you aware of any instance in
9 which EIG did not fund an investment that had
10 been approved by the Investment Committee?

11 A. We -- we haven't -- I mean, there are
12 several investments where we haven't provided the
13 full funding. You know, things have changed on
14 the investment and we've not funded the amount
15 approved at Investment Committee.

16 Q. The question is, have you -- are you
17 aware of any instance in which EIG did not fund
18 an investment that had been approved by the
19 Investment Committee?

20 A. So I'm aware of an instance where we
21 didn't fully fund -- is your question fund at
22 all?

23 Q. Yes.

24 A. I'm not -- I can't recall approved
25 investments where we didn't fund at all. There

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2 A. I recall being in the meeting, yes.

3 Q. Do you recall when the investment
4 recommendation was made for Sete to the
5 Investment Committee for Fund XIV?

6 A. Do I remember a date or do I recall
7 the event?

8 Q. Do you recall when that happened?

9 A. I think that was in June 2011.

10 Q. And you testified earlier that you
11 made that -- you presented the investment
12 recommendation to the Investment Committee for
13 EIG Fund XIV in June 2011; is that right?

14 A. I presented parts of it. I probably
15 wasn't the only presenter.

16 Q. And who presented the other parts of
17 the investment recommendation?

18 A. Kevin Corrigan would have presented
19 some of it.

20 Q. Anyone else?

21 A. I don't recall if anyone else
22 presented.

23 Q. And prior to that presentation to the
24 Investment Committee for Fund XIV, did you do any
25 due diligence of shipyards involved in Sete?

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2 A. I think there was a mention of them
3 or in the investment recommendation, but that was
4 an area more that, I think, Kevin Lowder, Kevin
5 Corrigan were more familiar with.

6 Q. But my question was, did you do any
7 due diligence of the shipyards involved in Sete
8 prior to the June 2011 meeting where Fund XIV
9 Investment Committee approved the Sete
10 investment?

11 A. I don't recall.

12 Q. And you testified in the DC action
13 that the Fund XV Investment Committee approved
14 its investment in Sete in September 2011; is that
15 right?

16 A. I think that's right, yes.

17 Q. And prior to September of 2011, did
18 you do any due diligence of any of the shipyards
19 involved in Sete?

20 A. I don't recall.

21 Q. And so, when you joined the Sete Deal
22 Team in mid June of 2011, did you have any
23 concerns about the due diligence that had been
24 done up to that date?

25 A. I had no concerns, no. There were

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2 things that needed to be completed, but I wasn't
3 concerned by anything.

4 Q. And what do you recall needed to be
5 completed when you joined the Sete team in June
6 of 2011?

7 A. I think the financial analysis was
8 still being completed. You know, personally I
9 wanted to read some of the key documents, so that
10 still needed to be done.

11 Q. Is that all that you recall still
12 needing to be done when you joined the Sete Deal
13 Team in June 2011?

14 A. Yeah, that's all I recall. There may
15 have been other things, but I don't remember.

16 Q. And at the time you worked on the
17 Sete transaction, could you speak or read
18 Portuguese?

19 A. No, no. It's a bit like Spanish. I
20 can understand parts of it, but I wouldn't try to
21 read a full document in Portuguese.

22 Q. So the documents that you reviewed as
23 parts of the due diligence process for Sete were
24 in English; is that right?

25 A. I think they --

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2 MS. PAK: Objection to form.

3 A. The charter agreement was a dual
4 English but along side the Brazilian. The EPC
5 contract was -- must have been in English to read
6 it. I think it was just in English rather than
7 in both languages.

8 Q. And those contracts that you
9 reviewed, were they executed contracts or draft
10 agreements?

11 A. I don't recall if they were signed or
12 not.

13 Q. Do you recall who the counterparties
14 were for those agreements that you reviewed?

15 A. No, there was just examples. Sete
16 was one of them. But I don't recall the exact
17 counterparties.

18 Q. At the time you joined the Sete Deal
19 Team in June 2011, who else was on the Deal Team
20 at EIG?

21 A. Kevin Lowder and Kevin Corrigan.

22 Q. Is that everyone?

23 A. To my recollection, yes.

24 Q. At the June 2011 Investment Committee
25 meeting where Fund XIV approved the investment in

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2 Sete, do you recall Alvin Albay asking any
3 questions?

4 A. I don't recall.

5 Q. And did Jeffrey Anderson ask any
6 questions at that same meeting?

7 A. I don't recall either.

8 Q. Did Blaire Thomas ask any questions
9 at that same meeting?

10 A. I don't recall. I mean, between them
11 they would have asked some questions, you know,
12 in the normal course of any Investment Committee.
13 But I don't remember the exact questions or a
14 memory of what they asked.

15 Q. And aside from the June 2011 and
16 September 2011 decisions to invest in Sete, did
17 EIG make any other decisions to invest in Sete?

18 MS. PAK: Objection to form.

19 A. There were I suppose an original loan
20 -- part of the investment subsequently came up
21 and then, yeah, I think there would have been
22 reviews of funding requests, as we were asked to
23 fund.

24 Q. Were you involved in the review --
25 any reviews of funding requests related to Sete?

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2 Ivan on the way.

3 Q. And how long did it take you to drive
4 to the Brasfels Shipyard?

5 A. I think it was a few hours. It was a
6 long ride. I don't remember exactly now.

7 Q. What did you do when you arrived at
8 the Brasfels Shipyard?

9 A. We -- do you mean immediately when we
10 arrived, or what did we do when we got there,
11 sorry? Are you asking for my general
12 recollection of what we did while we were at
13 Brasfels Shipyard?

14 Q. Well, what -- once you arrived at the
15 shipyard, did you meet any employees of the
16 shipyard?

17 A. Yes, we were shown around the
18 shipyard by Keppel employees. We also had a
19 meeting with them in a meeting room at the
20 shipyard.

21 Q. And who showed you around the
22 shipyard?

23 A. I don't recall the name of the
24 person. There were, at least, two Keppel people
25 showing us around. There were reasonable

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2 sizeable group. So we were accompanied. We are
3 accompanied to these sites. So we were
4 accompanied throughout the trip by, at least, a
5 couple of Keppel employees and -- you know, but I
6 don't remember their names.

7 Q. And how did you know that they were
8 "Keppel employees"?

9 A. They were wearing the sort of Keppel
10 sort of boiler suits and the hat, the hardhat.

11 Q. And what did you see at the Brasfels
12 Shipyard?

13 A. They showed us the whole shipyard.
14 So we started off in the welding area where the
15 equipment is sort of -- you know, like, building
16 these ships is like a jigsaw puzzle. So you
17 start by welding the, you know, the metal parts
18 into the right shape and it sort of goes down
19 towards the shore and gets bigger as more parts
20 get welded together. So we saw all of that in
21 the transition area. They were at work at the
22 time.

23 And then we saw the, obviously, you
24 know, near the dock where the boats are actually,
25 you know, final construction takes place and, you

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2 know, the cranes, the different docks. And then
3 they also showed us inside -- at the very back of
4 the shipyard first away from the shore was the
5 building where the sort of, you know, the admin
6 building, that's where we had the meeting with
7 them.

8 Q. And what happened at the meeting that
9 you referenced?

10 A. They introduced the shipyard and gave
11 us an overview of Keppel and the shipyard. The
12 purpose of the visit was to get -- Sete was
13 really telling its investors to give them comfort
14 that these ships could be built in Brazil. And
15 so the Keppel yard was selected as the best one
16 -- yeah, at least, one of the best, if not the
17 best yard in Brazil to show us around. So it was
18 kind of a presentation of the, I think, abilities
19 of this shipyard to produce these complex
20 vessels.

21 Q. And so was the presentation focused
22 on the ship building capacity of the shipyard?

23 A. Yeah, to the best of my recollection,
24 it was going through the capacity of the
25 shipyard.

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2 Q. Was the presentation or tour in
3 English or Portuguese?

4 A. It was presented in English.

5 Q. And who gave the presentation at the
6 Brasfels Shipyard?

7 A. I don't recall the name of the
8 person.

9 Q. Was it a man or a woman?

10 A. A man.

11 Q. And how old, approximately, was he?

12 MS. PAK: Objection to form.

13 A. I would say middle-aged. I don't
14 remember.

15 Q. Did you speak with any employees of
16 the shipyard?

17 A. Yeah, I think it was -- it was a
18 free-flowing conversation for the hour or more
19 that we were going around. We were sort of
20 question and answer session where we were asking
21 questions around the shipyard and they were
22 responding to us.

23 So it was quite a lot of interaction,
24 you know, over the shipyard and what we're
25 looking at and they're explaining to us, you

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2 know, exactly how it all worked and the process
3 of that, the shipyard.

4 Q. And did you personally ask any
5 questions of anyone at the shipyard?

6 A. Well, I would have -- I think I was
7 quite fascinated by it. I was quite involved,
8 but I don't remember the exact questions.

9 Q. Did you see any ships being built for
10 Sete at the Brasfels Shipyard?

11 A. I don't recall for whom the ships
12 were being built.

13 Q. What did the ships look like?

14 MS. PAK: Objection to form.

15 A. I mean, they were -- they were just
16 pieces of metal at that point in time. They
17 weren't -- I don't recall the sort of, you know,
18 big ships sitting in the dock ready to sail off.
19 They were literally welding the initial pieces of
20 things together and it was sort of moving along.
21 So I don't recall seeing it sort of, you know, a
22 big completed boat and -- well, actually, now you
23 saying that, I do actually remember there was a
24 boat there, which had sort of technical -- needed
25 an upgrade. But, anyway, you know, I don't -- I

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2 don't recall the details of the -- what vessels
3 they were or who they were for.

4 Q. And how long, approximately, did your
5 visit to the Brasfels Shipyard last?

6 A. I would say two to three hours.

7 Q. And did you watch any videos or slide
8 shows during your visit to the Brasfels Shipyard?

9 A. I recall a slide show and then the
10 presentation, there being a slide show, yes. I
11 don't remember if there was a video, all the
12 contents of the slide show.

13 Q. What was included -- what do you
14 remember about the slide show?

15 A. Well, I think, it was just a poor --
16 you know, the presentation of the shipyard
17 capacity, you know, the capacity of the shipyard
18 to produce (UNINTELLIGIBLE) ships and
19 recollection of, you know, being the mention of
20 the Keppel and their ability, you know, the sort
21 of it's a Keppel yard and, you know, sort of
22 broad corporate picture supporting the yard.

23 Q. Is there anything else that you
24 recall about the presentation?

25 A. No.

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2 Q. Alright. I'd like to introduce as
3 Defendant Exhibit 16, a document Bates stamped
4 KEPPEL0001989 [sic].

5 (Deposition Exhibit Defendant's 16,
6 slide deck DSS38E Semi-Submersible KEPPEL00012989
7 to KEPPEL00013002, was marked for
8 identification.)

9 Q. Mr. Hayden, let me know when you see
10 the document.

11 MS. PAK: David, is this a standalone
12 document, or is it part of a family?

13 MR. KUMAGAI: There is a family. But
14 I'm just going to ask questions about the
15 attachment.

16 MS. PAK: Okay. So can you introduce
17 the family to provide context to the witness as
18 to the entire document?

19 MR. KUMAGAI: Well, I'll ask him
20 questions. And if he needs context, I can
21 introduce the family.

22 MS. PAK: Okay. Well, we object to
23 the fact that the parent, to the extent there is
24 one, is missing from this exhibit.

25 MR. KUMAGAI: Okay.

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2 involved in corruption schemes like this.

3 Q. Prior to this EIG didn't think that
4 blue chip companies could be engaged in
5 corruption?

6 MS. PAK: Objection to form.

7 A. I can't speak for EIG. But my -- my
8 view at the time I suppose and now, it could
9 always happen, but you just don't expect it from
10 -- you don't expect it in life in general but,
11 particularly, from, you know, large companies
12 that have solid reputations and, you know, very
13 established energy players. It's ship builders,
14 you know, it's not something that I expected to
15 happen. I suppose you learn from experience is
16 what I'm saying.

17 Q. And what would you do differently
18 about the due diligence work that you did on the
19 Sete transaction in light of your experience on
20 Sete?

21 MS. PAK: Objection to form.

22 A. I don't know what we would have done.
23 I mean, we did our compliance checks. I mean, it
24 was, obviously, hidden and nobody knew about it.
25 So I don't think amount of diligence back then

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2 would have uncovered it. It, obviously, took,
3 you know, years to come out. So, you know, we do
4 our diligence still on, you know, compliance
5 corruption. And, I mean, I don't -- I'm not sure
6 we'd do differently, maybe dig harder with the
7 experience of having been through a corruption
8 scandal and not be quite so trusting. But it's
9 kind of -- you know, it's a soft personal thing.

10 But, in terms of policies, I think,
11 we do pretty much the same as we did and I'm just
12 not sure any amount of diligence would have
13 uncovered what was going on in 2011.

14 Q. If EIG had uncovered allegations of
15 bribery against entities involved in Sete before
16 deciding to invest in Sete, would you have
17 recommended that EIG invest in Sete?

18 MS. PAK: Objection to form.

19 A. Well, if -- yeah, if it was, you
20 know, bribery scheme like that, we never would
21 have invested had we known of the Lava-Jato
22 corruption. I mean, no investor would have
23 invested like that. That's obvious.

24 Q. What would you expect EIG to do in
25 response to learning of allegations against

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2 people or entities involved in Sete that they
3 were accepting bribes?

4 MS. PAK: Objection to form.

5 A. We -- we would -- you know, cause,
6 you know, the exact context of what we -- the
7 situation you're talking about, but we would
8 investigate and, you know, look into that.
9 Sometimes there are baseless allegations,
10 sometimes they're real allegation. And so we
11 would have dug into it and tried to get to the
12 bottom as to whether those allegations were real
13 or not.

14 Q. And what do you mean, we would have
15 dug into it to get to the bottom of it? What
16 would that have involved?

17 MS. PAK: Objection to form.

18 A. Well, reviewing what's sort of
19 publically known. We would have spoken to people
20 in -- you know, we have a local office. So
21 spoken to people to see what we could find out
22 about the nature of the allegations by talking to
23 the companies that we had access to and ask them
24 directly what is the -- what's the charge here
25 and, you know, give us more information and

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2 explain it to us. I mean, there are different
3 ways of getting to the bottom of these
4 allegations.

5 Q. But if EIG did discover those kinds
6 of bribery or corruption allegations against an
7 entity involved in Sete, your expectation would
8 be that EIG investigate those allegations
9 including by talking to the entities directly; is
10 that your testimony?

11 MS. PAK: Objection to form.

12 A. I would expect, you know, we would do
13 that. I wasn't involved in Sete when all this
14 broke. But that's -- yeah, I mean, we may take
15 legal advice as to what you should do in terms
16 of, you know, speaking. I think different
17 geographies is different. But -- so as long as
18 there's legal advice permitting it, those are the
19 things I would do anyway.

20 Q. In terms of the bear minimum
21 expectation after learning about these types --
22 allegations of corruption or bribery against
23 someone at Sete, what would you have expected EIG
24 to do?

25 A. Is that not the same question?

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2 Sorry, after learning of the allegations, what
3 would we have done?

4 You know, that you -- make sure that
5 the allegations are real, just to check that
6 they're not sort of frivolous. That's what we
7 just talked about.

8 And then are you saying if you
9 decided that they weren't frivolous or something
10 real here, what would you do?

11 Q. Well, how would you be satisfied that
12 they were "frivolous"?

13 MS. PAK: Objection to form.

14 A. That's -- that's an odd question.
15 It's a judgment call based on the information you
16 have.

17 Q. If they had been charged, criminally
18 charged, would you consider that to be serious
19 enough to investigate?

20 MS. PAK: Who is "they," David?

21 Q. Did people involved in a transaction
22 that you were investing had been criminally
23 charged, would that require you to investigate?

24 MS. PAK: Objection to form.

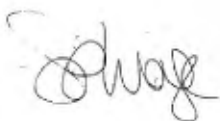
25 A. So you're talking about people

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C E R T I F I C A T E O F R E P O R T E R

I, SILVIA P. WAGE, a Certified Shorthand Reporter, Certified Realtime Reporter and Registered Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in the within-entitled cause; that said deposition was taken down in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony of the said witness was thereafter reduced to typewriting, by computer, under my direction and supervision; that before completion of the deposition, review of the transcript [X] was [] was not requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.



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